

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CURRAN, Minors.

UNPUBLISHED

May 15, 2014

No. 317470

Grand Traverse Circuit Court

Family Division

LC No. 11-003293-NA

Before: OWENS, P.J., and MURRAY and RIORDAN, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating her parental rights to her three children pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist and no reasonable likelihood of rectification), (c)(ii) (other conditions arose and no reasonable likelihood of rectification), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood child will be harmed). We affirm.

I. FACTUAL BACKGROUND

A. COURT PROCEEDINGS

At issue in this appeal is the termination of respondent's parental rights to her three daughters—S.C. (born in 2003), K.C. (born in 2011), and A.C. (born in 2012). Respondent experienced ongoing struggles with severe mental illness, and was temporarily hospitalized in 2002. Respondent's father explained that in 2007, respondent was acting irrational, paranoid, believed a bomb had been planted under her car, and threatened to harm herself and others. A petition for hospitalization was submitted, which detailed allegations that respondent was threatening to drown S.C. and believed S.C. should not live because she was tall and ugly. Respondent was diagnosed bipolar with paranoid tendencies, and respondent's parents became S.C.'s guardian in 2008.

After respondent was released from the mental health facility and the guardianship ceased, respondent stopped taking medication, and again was acting paranoid and delusional. Respondent's father testified that S.C. was not being cleaned, fed, or clothed properly. On April 15, 2011, Child Protective Services (CPS) received a report that respondent was unstable and acting irrational. In October of 2011, CPS received another report that respondent was yelling at then eight-year-old S.C. and according to a subsequent petition, respondent admitted to hitting S.C.

On November 9, 2011, respondent and her two children, those born at the time, appeared at the Department of Human Services (DHS) and requested a gas card, as she intended to spend the night in her car and believed that her parents' house was toxic. Respondent was approximately five months pregnant with her third child and appeared mentally unstable, paranoid, and was pulling out her hair. Her two children also appeared unkempt and uncared for, and K.C. had a suspicious mark on the left side of her face.

As respondent's behavior continued to deteriorate, CPS called law enforcement for immediate assistance, but respondent fled the building with her children. A statewide alert was sent out and on November 10, 2011, respondent was caught trying to leave the state with her two children. Respondent refused to cooperate with law enforcement, had to be tasered with K.C. in her lap, and was arrested for resisting and obstructing law enforcement. Respondent eventually pleaded guilty to two counts of disorderly conduct.

The children were placed with respondent's sister. DHS filed a petition on November 10, 2011, requesting the court to take jurisdiction over S.C. and K.C. The court ordered the children to be taken into protective custody and took jurisdiction over the children based on respondent's plea.¹

In February of 2012, an Adult Protective Service worker submitted a petition to have respondent hospitalized. Respondent was exhibiting troubling mental health signs, she made statements regarding not wanting to care for the baby, and not wanting to deliver the baby in the hospital. Respondent was committed, and received psychiatric care for paranoia and fearfulness. According to respondent, she was hospitalized because she was anxious about petitioner taking her baby.

After A.C. was born, petitioner filed a supplemental petition requesting the court to take jurisdiction over A.C. The court entered an order to take A.C. into protective custody and took jurisdiction over A.C. based on her father's plea. A.C. was placed with her sisters in the care of respondent's sister.

In the spring of 2012, respondent again was committed to a mental health facility. On March 29, 2012, respondent had shown up at the DHS office and was acting delusional. According to the foster care worker, respondent said that she had been bothered by a glass of milk, she threw it away, then broke a plate, cut her face with the broken plate pieces, and cut off chunks of her hair. She then disposed of all her medication. Respondent did not agree that she was acting suicidal.

In December 2012, supervised parenting time was suspended as it was found harmful to the children. On April 1, 2013, petitioner filed a supplemental petition and requested termination of respondent's parental rights under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist and no reasonable likelihood of rectification), (c)(ii) (other conditions arose and

¹ K.C. and A.C.'s father eventually entered a release of his parental rights, and S.C.'s father's rights were terminated in these proceedings.

no reasonable likelihood of rectification), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood child will be harmed).

B. THE MINOR CHILDREN

At the termination hearing, respondent's father testified that immediately after the removal, S.C. was having nightmares and was opposed to contact with respondent, and K.C. was very upset when she had to see respondent. Karen Mueller, a treatment provider at Pine Rest Clinic, testified that S.C. presented with Post Traumatic Stress Disorder (PTSD). S.C. identified the traumatic event as fleeing with respondent, and characterized living with her as "scary" and visiting with her as "awkward." Mueller observed that S.C. had taken on a mothering role regarding K.C., which was unhealthy for S.C. Visits with respondent and S.C. did not go well, as respondent had to be prompted to engage appropriately with S.C., and had a tendency to become defensive.

S.C. continued to express discomfort with and reluctance to visit respondent, she became frustrated and upset, and began to act out at school. Mueller observed that contact with respondent was "retraumatizing" S.C. After visitation was suspended, S.C. was noticeably happier. Mueller testified that respondent did not have the ability to meet S.C.'s needs, showed no progress in putting her own needs aside, and that termination was "absolutely" in the best interests of S.C.

Another clinical therapist, Renee Beyette, worked with K.C. beginning in July 2012, and diagnosed K.C. as suffering from PTSD. When K.C. was left alone with respondent, she began screaming and acting hysterical, then lapsed into detachment. Beyette observed that K.C. and respondent did not seem to connect, and respondent often seemed detached. According to Beyette, K.C. was experiencing "toxic stress" that was developmentally dangerous, and that K.C. did not feel safe with respondent.

After visitation was suspended, K.C. improved remarkably. Beyette testified respondent lacked the ability to be emotionally available on a consistent basis, and she was unable to meet K.C.'s needs. Beyette also emphasized that despite progress in some areas, she had lingering concerns with respondent's ability to parent, and apply what she learned. Respondent's father confirmed that after visitation was suspended, S.C. was more relaxed and pleased, and K.C. started to make strides toward recovery.²

C. RESPONDENT

² Teri Parsons, an employee at Safe Haven, testified that as of December 2012, she had concerns regarding respondent's judgment, that K.C. and S.C. were distant from respondent, and K.C. became distraught when left with respondent. Janice Meyer, a Court Appointed Special Advocate volunteer, testified that S.C. and K.C. were distraught when meeting with respondent and had been doing well since visitation had been suspended.

Numerous mental health professionals testified about respondent's mental health. Psychiatrist Dr. Neal Howard Fellows began treating respondent in January of 2008, and verified that respondent had been diagnosed with bipolar disorder, anorexia, and an anxiety disorder, with references to paranoid schizophrenia and major depression with psychosis. However, he claimed that respondent had gone back on certain medication in January of 2013, and that he sensed her gradual acceptance of medication. While he had no major concerns about her, Dr. Fellows also acknowledged that he was unable to predict whether respondent would decline medication in the future.

Dr. David Klee, who primarily treated respondent when she was pregnant with K.C. and A.C., testified that he believed respondent demonstrated poor insight into managing her mental health problems. He clarified that his fear was not that respondent would intentionally harm the children, but that "her lack of insight at times would potentially put her children at risk." Nurse Marie Nugent, who also encountered respondent primarily during her last two pregnancies, claimed that there was nothing of concern in respondent's home. Yet, Nugent observed that respondent experienced a lot of stress and anxiety and exhibited a lack of emotional or physical interaction with K.C. or ability to address K.C.'s nutritional needs. Nugent feared the children were not receiving proper mental or emotional care.

Psychologist Dr. David Barnes completed an evaluation of respondent on December 19, 2011. He explained that the "hard wiring" of respondent's brain was not "quite right" and that there was a propensity to become psychotic and have disorganized thinking during periods of prolonged stress, which would affect her reasoning and judgment. Dr. Barnes also alluded to his doubts regarding respondent's motives for accepting medication. He testified that "[t]he question is whether or not" treatment and medication "will be maintained when this process is over" or whether respondent was taking medication for the wrong reasons, namely, these proceedings.

Psychologist Dr. Wayne Simmons completed an evaluation of respondent on March 18, 2013. He recommended a guardianship, as respondent continued to be suspicious that her sister was trying to kidnap the kids, she had not taken responsibility for her actions, and she had a pattern of poor judgment and deteriorating functioning that did not allow the kids to be with her in the foreseeable future. Dr. Simmons admitted that he had never met the children and that if the court had information that contact with respondent was toxic and destabilizing to the children, he would recommend termination.

Dorothy Britten, a therapist at Lakeview Counseling, testified that as of May 2012, respondent had made progress but that it was unclear whether it was sustainable. Britten had lingering concerns regarding respondent's anxiety, insight, and ability to cope with stressors. Similarly, Rhonda Wurtz, a private contractor with DHS, testified that as of December 2012, respondent still displayed problems with affection, bonding, and communication, and that S.C. was primarily acting as the mother. Wurtz recommended that respondent not have unsupervised visits with the children.

Yet, Julie Eikey, an employee at Safe Haven, testified that despite minor difficulty recognizing the children's cues, respondent had a great bond with the children as of December 2012. In contrast to Wurtz, Eikey did not have any major concerns with respondent, although

Eikey admitted that K.C. and respondent did not always interact positively, and respondent and eight-year old S.C. were parenting together, which was unhealthy for S.C.

Foster care worker Mackenzie Weston testified that respondent had failed to benefit from the parent-agency treatment, plan services, or make substantial progress. Weston detailed that throughout the proceedings, respondent often spoke and acted delusional, was unable to grasp parenting concepts or the children's feelings, and did not seem to connect with the children, including A.C. Weston clarified that while respondent had completed the tasks of her parent-agency agreement, respondent was unable to change her behavior or show improvement in the areas of mental health, parenting skills, financial welfare, and her relationship status.³ Weston testified that based on the ages of the children and the trauma they suffered, they needed stability, safety, and permanency.

Respondent's father likewise testified that while respondent had made progress, it was not significant. He explained that respondent refused to accept responsibility for her actions, recognize others who have helped her, and maintained her paranoia and animus. He explained that, perhaps due to her delusions, respondent was unconvinced of her mental illness.

Respondent explained that her homelessness only lasted for a month in 2011, and was due to a set of unfortunate circumstances involving her inability to obtain a new apartment before her lease expired. She also explained that she refused medication when pregnant with A.C. as she feared the effect on the baby, and that she was currently medicated and expected to remain so for awhile. She further claimed that she only had one domestically abusive relationship, with S.C.'s father, and that the relationship with K.C. and A.C.'s father produced stressors. Respondent worked 30 hours a week at a grocery store, and was planning to go back to school for accountancy. She also had filed for bankruptcy and was current on court and child support payments.

According to respondent, S.C. had been a well behaved child but that after removal, S.C. became more rebellious. While respondent acknowledged that S.C. was acting as a caretaker for K.C. and A.C., she claimed that S.C. had not been doing that prior to removal. Respondent also claimed that DHS was ignoring her concerns, such as introducing strangers to K.C. or having S.C. carry K.C. She agreed that trying to flee the state was irresponsible and ill planned, but claimed that the tasing was traumatic for K.C. and S.C., and that it had been overlooked by the mental health professionals. While respondent admitted that her parents were reliable, she claimed that they did not respect her authority as a parent and would undermine her in front of the children. Respondent testified that she had a strained relationship with her sister and that if

³ Weston detailed respondent's financial woes, including her arrest in May 2012 for failure to pay child support, she was behind in attorney and court fees, she had difficulty keeping a job, and at times she worked too many hours than her psychiatrist advised. Weston also illuminated respondent's toxic relationship with K.C. and A.C.'s father, which respondent continued throughout the proceedings despite counseling services and the negative impact the relationship had on her mental health.

respondent's rights were not terminated, she did not know the role her extended family would play in the children's lives.⁴

D. FINDING

The court ultimately terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). The court also found that termination was in the children's best interests, as the children needed stability, guidelines, permanency, and safety. Respondent now appeals.

II. GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

Respondent first challenges the trial court's findings regarding the grounds for termination. We review for clear error the trial court's ruling that a statutory ground for termination has been established by clear and convincing evidence. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.*

B. MCL 712A.19b(3)(c)(i) & (c)(ii)

Respondent first challenges the trial court's finding under MCL 712A.19b(3)(c)(i) and (ii), which provide:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

⁴ Respondent also presented the testimony of her cousin and friend, who opined that they did not have any significant concerns about respondent and that respondent was a good mother. Both had limited recent contact with respondent and her children.

On appeal, respondent posits that she complied with the parent-agency agreement and independently sought out additional services. She therefore concludes that termination was improper. However, respondent was not tasked with mere participation in the services offered. Rather, she had to participate and sufficiently benefit from the services in order to address the causes of concern. *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). As this Court has recognized:

‘Compliance’ could be interpreted as merely going through the motions physically; showing up for and sitting through counseling sessions, for example. However, it is not enough to merely go through the motions; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody. In other words, it is necessary, but not sufficient, to physically comply with the terms of a parent/agency agreement or case service plan. For example, attending parenting classes, but learning nothing from them and, therefore, not changing one’s harmful parenting behaviors, is of no benefit to the parent or child. [*In re Gazella*, 264 Mich App 668, 677; 692 NW2d 708 (2005) superseded by statute on other grounds MCL 712A.19b(5).]

Thus, respondent’s compliance with the minimum requirements of attendance and participation in the services offered is not dispositive. Nevertheless, respondent further argues that the trial court’s finding that she did not sufficiently benefit was based on a subjective and improper standard. However, respondent merely focuses on evidence supporting her position in an attempt to discount unfavorable evidence. Contrary to respondent’s assertions on appeal, there was significant evidence to support the trial court’s finding under MCL 712A.19b(3)(c)(i) and (c)(ii).

Therapist Britten discussed her uncertainty regarding the sustainability of respondent’s progress, and her lingering concerns regarding respondent’s anxiety, insight, and ability to cope with stressors. Wurtz likewise testified that respondent still displayed difficulty with affection, bonding, and communication. Foster care worker Weston confirmed that while respondent participated in services, she had not made substantial progress. Weston detailed respondent’s ongoing paranoia and delusions, as well as her failure to emotionally connect with her children, including A.C. Weston concluded that although respondent had completed the tasks of her parent-agency agreement, she was unable to change her behavior or show improvement in the areas of mental health, parenting skills, financial welfare, and her relationship status.

Furthermore, while psychiatrist Dr. Fellows sensed respondent’s gradual acceptance of medication, he admitted that it was impossible for him to predict whether she would continue on that path. Psychologist Dr. Barnes also questioned whether respondent’s compliance with medication was genuine, or merely contrived for these proceedings. Respondent’s father also illuminated the broader context in which respondent’s apparent progress was made. He detailed that respondent’s severe mental health issues manifested themselves as far back as 2002, and in the subsequent 10 years, respondent frequently refused medication. He explained that perhaps due to her delusions, respondent remained unconvinced of her mental illness. Psychologist Dr. Simmons also evaluated respondent as recently as March 18, 2013, and testified that respondent

was suspicious that her sister was trying to kidnap the kids, she had not taken responsibility for her actions, and that she consistently had poor judgment and deteriorating functioning.

Even more telling is respondent's testimony at the termination hearing, where she demonstrated a lack of insight into her behavior. Instead of taking responsibility for the trauma her children experienced, respondent narrowly focused on the tasing event and the subsequent removal as the primary sources of trauma. She characterized the children's troublesome behavior—S.C.'s rebelliousness and mothering and K.C.'s emotional turmoil—as merely a result of their removal from her care. She also displayed a distrust of her extended family and a failure to recognize the help they provided. As the trial court summarized, respondent did not acknowledge the harm the children suffered and “failed to acknowledge any role in the emotional harm sustained by the children, instead blaming the tasing event for all the children's problems.”

In light of this overwhelming evidence, we find no error in the trial court's findings under MCL 712A.19b(3)(c)(i) and (ii) or conclusion that despite her participation in services, respondent did not sufficiently benefit or progress.

C. MCL 712A.19b(3)(g) & (j)

Next, respondent challenges the trial court's finding based on MCL 712A.19b(3)(g), which provides: “The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.” Respondent also challenges the trial court's finding regarding MCL 712A.19b(3)(j), which provides: “There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.”

In addition to the evidence regarding respondent's lack of progress, there was significant evidence of the traumatic state of her children. Respondent's father testified that immediately after the removal, S.C. was having nightmares and was vehemently opposed to contact with respondent, and K.C. was very upset when she had to see respondent. Foster care worker Weston testified that respondent was not emotionally connecting with the children, including A.C. Weston explained that respondent would engage in little conversation with the children, would hold A.C. facing away from her in an emotionally distant manner, and had to be prompted to touch the children. Weston also observed that A.C. was often dressed inappropriately for the weather.

Treatment provider Mueller testified that S.C. had PTSD and identified the traumatic event as fleeing with respondent. S.C. also characterized living with respondent as “scary.” Mueller observed that S.C. had taken on a caregiver role regarding K.C., which was unhealthy. Also, interactions between respondent and S.C. went poorly, and S.C. continued to express discomfort with and reluctance to visit respondent, became frustrated and upset, and began to act out at school. Mueller opined that contact with respondent was “retraumatizing” S.C. and that after visitation was suspended, S.C. was happier.

Therapist Beyette likewise testified that K.C. had PTSD and when left alone with respondent, K.C. began screaming and acting hysterical, then lapsed into detachment. Beyette observed that K.C. felt unsafe with respondent and was experiencing “toxic stress” that was developmentally dangerous. After visitation was suspended, K.C. improved remarkably. Beyette concluded that respondent lacked the ability to be emotionally available on a consistent basis or to meet K.C.’s needs.

Thus, the evidence was sufficient to demonstrate that—without regard to intent—respondent failed to provide proper care or custody of the minors, MCL 712A.19b(3)(g). Respondent, however, contends that she was unfairly blamed for the children’s trauma and that the real trauma occurred when the police unjustifiably tasered her. Yet, as Beyette explained, the tasing event did not explain the extent and intensity of K.C.’s fear directed toward respondent. Mueller also verified that S.C. identified the trauma as fleeing with respondent, not the tasing, and that S.C. characterized living with respondent as “scary.”

Moreover, given respondent’s lack of progress in emotionally connecting with the children or in recognizing the role she played in traumatizing them, the trial court did not err in finding that she would be unable to provide proper care and custody within a reasonable time given the children’s ages, or that there was a reasonable likelihood the children would be harmed if returned to respondent. MCL 712A.19b(3)(g); MCL 712A.19b(3)(j). As this Court recognized in *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011), the concept of “harm” does not merely apply to “the potential of *physical* harm or abuse” as it may apply in instances where “the children had been, and continued to be, at risk of *emotional* harm.” (Emphasis in original). Here, numerous witnesses testified about the limited insight respondent displayed about the proper mental or emotional care of her children, and the resulting negative impact it had on her children. Therefore, the trial court was not in error.

III. JURISDICTION

Lastly, respondent raises a challenge to the adjudication, ostensibly based on the one-parent doctrine, as K.C.’s father pleaded to jurisdiction.⁵ However, respondent has waived this issue, as “[m]atters affecting the court’s exercise of its jurisdiction may be challenged only on direct appeal of the jurisdictional decision, not by collateral attack in a subsequent appeal of an order terminating parental rights.” *In re Gazella*, 264 Mich App at 679-680; see also *In re SLH*, 277 Mich App 662, 668; 747 NW2d 547 (2008). Furthermore, respondent subsequently pleaded to the court’s exercise of jurisdiction over S.C. and K.C., and has not provided a valid, legal basis for withdrawing her plea. See *In re CR*, 250 Mich App 185, 199; 646 NW2d 506 (2002) (it is not enough for a respondent “simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for her claims . . . and then search for

⁵ He subsequently pleaded to the court’s jurisdiction over A.C., which respondent does not specifically challenge on appeal.

authority either to sustain or reject her position.” (Brackets omitted)).⁶ Therefore, respondent has failed to establish any grounds for reversal.

IV. CONCLUSION

The trial court did not err in terminating respondent’s parental rights pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist and no reasonable likelihood of rectification), (c)(ii) (other conditions arose and no reasonable likelihood of rectification), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood child will be harmed). We affirm.

/s/ Donald S. Owens
/s/ Christopher M. Murray
/s/ Michael J. Riordan

⁶ While the constitutionality of the one-parent doctrine, *In re CR, supra*, is pending before the Michigan Supreme Court in *In re Sanders*, 493 Mich 959; 828 NW2d 391 (2013), “[a] published opinion of the Court of Appeals has precedential effect under the rule of stare decisis” and “a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion of the Court of Appeals.” MCR 7.215(C)(2).